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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 DONALD C. HAYES,

9 Plaintiff,

v.

10 STATE OF WASHINGTON,  
11 DEPARTMENT OF CORRECTIONS,  
et al.,

12 Defendants.  
13

CASE NO. C16-5095 BHS-DWC

ORDER ADOPTING REPORT  
AND RECOMMENDATION

14 This matter comes before the Court on the Report and Recommendation (“R&R”)  
15 of the Honorable David W. Christel, United States Magistrate Judge (Dkt. 220), and  
16 Plaintiff’s objections to the R&R (Dkt. 229).

17 On September 19, 2017, Plaintiff moved for a temporary restraining order and  
18 injunction. Dkt. 196. On October 31, 2017, Judge Christel issued his R&R  
19 recommending that motion be denied on the bases that: (1) Plaintiff seeks injunctive  
20 relief against non-parties, (2) the injunctive relief requested is unrelated to Plaintiff’s  
21 underlying claim set out in his fourth amended complaint, and (3) Plaintiff would be  
22

1 unlikely to succeed on the merits even if the requested relief were properly related to his  
2 underlying complaint. Dkt. 220. On November 9, 2017, Plaintiff objected to the R&R.

3 The district judge must determine de novo any part of the magistrate judge's  
4 disposition that has been properly objected to. The district judge may accept, reject, or  
5 modify the recommended disposition; receive further evidence; or return the matter to the  
6 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

7 Plaintiff does not actually raise any objections to the R&R. Instead, Plaintiff asks  
8 that the Court grant him leave to file a fifth amended complaint, adding new parties and  
9 asserting claims unrelated to his underlying fourth amended complaint. This is not a  
10 proper objection to the R&R's disposition regarding Plaintiff's motion for a temporary  
11 restraining order and injunction.

12 Additionally, to the extent Plaintiff seeks leave to amend his complaint, the Court  
13 denies such leave. First, the Court notes that such a motion is improperly made when  
14 raised in opposition to an R&R on a temporary restraining order and injunction. Any such  
15 request for leave to amend should have been brought in a new motion before Judge  
16 Christel, after which, if granted, Plaintiff could renew his request for injunctive relief.  
17 However, more importantly, Plaintiff's request is clearly nothing more than an attempt to  
18 resurrect his § 1983 claim against the Washington State Department of Corrections that  
19 was already dismissed on February 23, 2017. *See* Dkts. 111, 133. Accordingly, the Court  
20 denies Plaintiff's request for leave to file a fifth amended complaint.

21 The Court having considered the R&R, Plaintiff's objections, and the remaining  
22 record, does hereby find and order as follows:

1 (1) The R&R (Dkt. 220) is **ADOPTED**; and

2 (2) Plaintiff's motion is **DENIED**.

3 Dated this 11th day of December, 2017.

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5 BENJAMIN H. SETTLE  
6 United States District Judge